

No. 22-15961

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

DONALD J. TRUMP, AMERICAN CONSERVATIVE UNION,
RAFAEL BARBOSA, LINDA CUADROS, DOMINICK LATELLA,
WAYNE ALLYN ROOT AND NAOMI WOLF,

Plaintiffs-Appellants,

v.

TWITTER, INC., AND JACK DORSEY,

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of California
Case No. 3-21-cv-08378-JD
Hon. James Donato, United States District Judge

**APPELLANTS DONALD J. TRUMP, AMERICAN CONSERVATIVE
UNION, RAFAEL BARBOSA, LINDA CUADROS, DOMINICK LATELLA,
AND WAYNE ALLYN ROOT’S MOTION FOR EXTENSION OF TIME TO
FILE REPLY TO OPPOSITION TO MOTION FOR JUDICIAL NOTICE
(RELIEF REQUESTED BY DECEMBER 2, 2022)**

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Conservative Union; Rafael Barbosa;
Linda Cuadros; Dominick Latella; and
Wayne Allyn Root*

[ADDITIONAL COUNSEL ON
SIGNATURE PAGE]

Pursuant to Fed. R. App. P. 26(b) and 27, Plaintiffs-Appellants Donald J. Trump, American Conservative Union, Rafael Barbosa, Linda Cuadros, Dominick Latella, and Wayne Allyn Root (“Plaintiffs”) hereby move that the deadline for Plaintiffs’ submission of a Reply to Opposition to Motion for Judicial Notice be extended by five days, from Friday December 2, 2022 to **Wednesday, December 7, 2022**.

Plaintiffs filed a Motion for Judicial Notice (“MJN”) on November 14, 2022 (Dkt. 34). Defendants filed a Response to the MJN on November 25, 2022 (Dkt. 42). Thus, under Fed. R. App. P. 27(a)(4), Plaintiffs’ Reply to the Response is due Friday, December 2, 2022.

As stated in the attached Declaration of Andrei D. Popovici, co-counsel Marie L. Fiala, who drafted the MJN and is responsible for preparing the Reply, has been ill with the flu since Tuesday, November 29, 2022. Plaintiffs’ lead counsel, John Coale, who has overall responsibility for approving Plaintiffs’ submissions, is ill with COVID. Given these circumstances, it would be extremely difficult for Plaintiffs to prepare and file their Reply by the current deadline.

Under Circuit Advisory Committee Note to Rule 27-1, Note (7), requests for judicial notice and responses thereto filed during the pendency of the case are retained for review by the panel that will consider the merits of the case.

On November 22, 2022, Defendants filed a streamlined request for extension of time to file Answering Brief (Dkt. 39). On the same day, the Court denied Defendants' request as unnecessary, and stated that the briefing schedule is stayed (Dkt. 40).

Given the stay of the briefing schedule and the retention of the MJN briefs for review by the panel that will consider the merits of the case, neither the Court nor Defendants would be prejudiced by the short extension of time requested in this motion.

Intervenor United States does not oppose this motion. Counsel for Defendants has not responded to Plaintiffs' counsel's request to specify whether Defendants oppose this motion.

For the foregoing reasons, Plaintiffs respectfully request that their motion be granted.

Dated: December 1, 2022

Respectfully submitted,

ANDREI POPOVICI
MARIE L. FIALA
LAW OFFICE OF ANDREI D. POPOVICI, P.C.

By: s/ Andrei D. Popovici
Andrei D. Popovici

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**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Certificate of Compliance

9th Cir. Case Number(s): No. 22-15961

I am the attorney for Plaintiffs-Appellants Donald J. Trump, American Conservative Union, Rafael Barbosa, Linda Cuadros, Dominick Latella, and Wayne Allyn Root.

This brief contains 339 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief (*select only one*):

☒ [X] complies with the word limit of Fed. R. App. P. 27(d)(2) and the page limit of Cir. R. 27-1(1).

☐ [] is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.

☐ [] is an **amicus** brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).

☐ [] is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.

☐ [] complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):

☐ [] it is a joint brief submitted by separately represented parties;

☐ [] a party or parties are filing a single brief in response to multiple briefs; or

☐ [] a party or parties are filing a single brief in response to a longer joint brief.

☐ [] complies with the length limit designated by court order dated _____.

☐ [] is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature: *s/ Andrei D. Popovici*

Date: December 1, 2022

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**DECLARATION OF ANDREI D. POPOVICI IN SUPPORT OF MOTION
FOR EXTENSION OF TIME TO FILE REPLY TO OPPOSITION TO
MOTION FOR JUDICIAL NOTICE**

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President of the United States; American
Conservative Union; Rafael Barbosa;
Linda Cuadros; Dominick Latella; and
Wayne Allyn Root*

I, Andrei D. Popovici, hereby declare as follows:

1. I am an attorney at law, duly licensed to practice in the State of California and a member in good standing of the Bar of this Court. I am one of the counsel of record for Plaintiffs-Appellants Donald J. Trump, American Conservative Union, Rafael Barbosa, Linda Cuadros, Dominick Latella, and Wayne Allyn Root (“Plaintiffs”) in this matter. I make this declaration based on my personal knowledge of the facts set forth herein.

2. My co-counsel Marie L. Fiala, who drafted Plaintiffs’ Motion for Judicial Notice (Dkt. 34) and is responsible for drafting Plaintiff’s Reply, has informed me she has been ill with the flu and has had a fever since Tuesday, November 29, 2022.

3. My co-counsel John Coale, lead counsel in the case with overall responsibility for Plaintiffs’ submissions, has informed me he is ill with COVID.

4. In light of these circumstances, it would be extremely difficult for Plaintiffs to prepare and file their Reply by the current deadline of Friday, December 2, 2022.

I hereby declare under penalty of perjury that the foregoing is true and accurate and that this declaration was executed on December 1, 2022, in Dripping Springs, Texas.

s/ Andrei D. Popovici

Andrei D. Popovici